

IN THE CIRCUIT COURT OF SCOTT COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,)
JEREMIAH W. (JAY) NIXON,)
Attorney General of Missouri,)

AND THE MISSOURI DEPARTMENT)
OF NATURAL RESOURCES,)

Plaintiff,)

v.)

Case No. _____

MARILYN DIEBOLD, individually,)
108 Washington Ave.)
Oran, MO 63771)

RONALD DIEBOLD, individually, and)
1210 Main Street)
Oran, MO 63771)

SANDRA DIEBOLD, individually,)
1210 Main Street)
Oran, MO 63771)

Defendants.)

PETITION FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

COMES NOW, Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, the Attorney General of Missouri, Shannon L. Haney, Assistant Attorney General, and the Missouri Department of Natural Resources, and for its petition against Defendants Marilyn Diebold, Ronald Diebold, and Sandra Diebold, (“Defendants”), states as follows:

ALLEGATIONS PERTAINING TO ALL COUNTS

1. Plaintiff, Jeremiah W. (Jay) Nixon, is the duly qualified, elected, and acting Attorney General of Missouri. The Attorney General is authorized to institute, in the name and on behalf of the state, civil proceedings at law or in equity necessary to protect the rights and interests of the state under §27.060, RSMo. The Missouri Underground and Petroleum Storage Tank Law and the Missouri Clean Water Law authorizes the Attorney General's Office to bring this suit pursuant to §319.127.2, RSMo 2000, and §644.076, RSMo 2000.

2. The Missouri Department of Natural Resources, ("the Department"), is a duly authorized state agency created under Section 640.010, RSMo, in part, to enforce the provisions of the Missouri Underground and Petroleum Storage Tank Law, §§319.100 through 319.139, RSMo 2000, (as amended), and the implementing regulations, (collectively, the "UST Law") as well as the Missouri Clean Water Law, Chapter 644, RSMo 2000.

3. Based upon information and belief, Defendant Marilyn Diebold was engaged in the retail sale of petroleum at a business known as Diebold Service Station from at least March 1986 until 1998. Diebold Service Station was located at 214 Ada Street, Oran, Scott County, Missouri, (the "site").

4. At all times since at least March 1986, Defendant Marilyn Diebold has been, and is an "owner" and "operator" of four "underground storage tanks" for storing

petroleum at the site as those terms are defined in 319.100, RSMo 2000, and used throughout the UST Law.

5. Based upon information and belief, the four underground storage tanks, (“USTs”), were removed from the site on or about October 1998.

6. On August 4, 1999 and September 14, 1999, the Department issued two Letters of Warning to Defendant Marilyn Diebold for failure to properly close the USTs pursuant to 10 CSR 20-10.071 (2002). A true and accurate copy of the August 4, 1999 Letter of Warning and the September 14, 1999 Letter of Warning are attached hereto and incorporated respectively as Exhibit A and B. To date, the four USTs at the site have not been closed as required by 10 CSR 20-10.071 (2002).

7. Based upon information and belief, Defendant Marilyn Diebold sold the site to Defendants Ronald and Sandra Diebold on or about February of 1999.

8. On or about April 27-29, 1999, Department staff responded to a hazardous waste substance emergency involving contamination of the city of Oran Public Drinking Well. During the Department investigation, sixteen soil samples were taken near probable sources of contamination that could be contributing to contamination of the Oran Public Drinking Well. Out of the sixteen soil samples taken, the soil sample taken from the Diebold site contained the highest level of petroleum contamination. Department staff noted the sample from the Diebold site contained free product petroleum and had a strong petroleum odor.

9. In response to demands by the Department, on or about December 20, 1999, Defendants hired Smith & Co. Engineers to submit a site characterization work plan and cost estimate to the Department to investigate and determine the extent of petroleum contamination in the soil and groundwater at the site. A true and accurate copy of this site characterization work plan and cost estimate is attached hereto and incorporated herein as Exhibit C.

10. On or about January 5, 2000, the Department approved the site characterization work plan submitted by Smith & Co. Engineers on behalf of the Defendants and communicated this approval to Defendant Marilyn Diebold through a letter. The Department's approval letter is attached hereto and incorporated herein as Exhibit D.

11. On or about July 10, 2000, the Department sent correspondence to Defendant Marilyn Diebold requesting an update on the progress of the Smith & Co. Engineers' site characterization plan. To date, the Department has not received an update on the status of the site characterization plan. Based upon information and belief, Defendants failed to implement this site characterization plan.

12. On or about December 20, 2000, the Department issued a Letter of Warning to Defendant Marilyn Diebold. The Letter of Warning provided, in part, that the Department had determined that the site was a contributor to the contamination of the city of Oran's public drinking water supply and cited the violation of failing to investigate a

petroleum release due to off-site impacts under §319.109, RSMo 2000, 10 CSR 20-10.051, and 10 CSR 20-10.052. A true and accurate copy of this Letter of Warning is attached and incorporated as Exhibit E.

13. Due to the failure of Defendants to conduct an assessment of contamination at the site, on or about June 2001 Department staff requested entry to the site from Defendant Ronnie Diebold to install monitoring wells on the property. Defendant Ronnie Diebold refused to grant access to the site.

14. Due to Defendant Ronnie Diebold's denial of access to the site, the Department installed monitoring wells surrounding the site in July of 2001. Samples taken from these monitoring wells indicate that the petroleum contamination is migrating off site through the groundwater.

15. On or about June 13, 2002, the Department issued Notice of Violation No. 020613-0585-01 to Defendant Marilyn Diebold. This Notice of Violations outlined the violations at the site including failure to investigate the extent of petroleum contamination affecting off-site properties and groundwater in violation of the UST Law and the Missouri Clean Water Law. A true and accurate copy of this Notice of Violation and its cover letter are attached hereto and incorporated herein as Exhibit F. The Department requested that Defendant Marilyn Diebold contact them within fifteen days of receiving the Notice of Violation. This Notice of Violation was returned to the Department marked refused.

16. On or about June 13, 2002, Department staff sent a letter to Defendants Ronald and Sandra Diebold outlining the violations at the site requesting immediate action to investigate and remediate the groundwater contamination at the site. A true and accurate copy of this letter is attached hereto and incorporated as Exhibit G. This letter was returned to the Department marked refused and Defendants Ronald and Sandra Diebold never contacted the Department.

17. Through the above actions, Defendant Marilyn Diebold has violated the UST law by:

- a. failing to investigate off-site contamination impacts of a petroleum release pursuant to 10 CSR 20-10.051(1);
- b. failing to take corrective and investigation confirmation steps due to a release of petroleum products pursuant to 10 CSR 20-10.052;
- c. failing to investigate a release of petroleum products affecting groundwater pursuant to 10 CSR 20-10.065; and
- d. failing to properly close the four USTs at the site pursuant to 10 CSR 20-10.071.

18. Section 319.127, RSMo 2000, provides that due to the above listed violations of the UST law, Marilyn Diebold can be subject to an assessment of a civil penalty not to exceed ten thousand dollars, (\$10,000.00), for each day, or part thereof, the violations listed above have occurred or continue to occur.

19. The petroleum located underground at the site is a “water contaminant” as defined in §644.016(22), RSMo 2000, and the groundwater located under the site is a “water of the state” as defined §644.016(25), RSMo 2000.

20. Through their actions of refusing to remediate the property and denying access to Department staff, Defendants Marilyn Diebold, Ronald Diebold, and Sandra Diebold have caused pollution of a water of the state by permitting to be placed a water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state in violation of the Missouri Clean Water Law §644.051.1(1), RSMo 2000.

21. A suit for civil penalties not to exceed ten thousand dollars (\$10,000.00) per day per violation for each day, or part thereof, each violation occurred, and continued to occur, or both as this Court deems proper is authorized against Defendants pursuant to §644.076.1 for violations of the Missouri Clean Water Law and its implementing regulations.

22. Venue is proper herein because the subject property is located in Scott County and the acts of the Defendants occurred therein.

COUNT I: CIVIL PENALTY AND INJUNCTIVE RELIEF
FOR VIOLATIONS OF THE UST LAW

23. The State of Missouri realleges and reincorporates herein by reference the allegations contained in paragraph 1-22 of this Petition as though fully stated herein.

24. Since at least December of 1998, Defendant Marilyn Diebold has failed to comply with the UST law in that she failed to investigate off-site contamination impacts of a petroleum release pursuant to 10 CSR 20-10.051(1), failed to take corrective and investigation confirmation steps due to a release of petroleum products pursuant to 10 CSR 20-10.052, failed to investigate a release of petroleum products affecting groundwater pursuant to 10 CSR 20-10.065, and failed to properly close the four USTs at the site pursuant to 10 CSR 20-10.071.

25. The Department issued three Letters of Warning and NOV #020613-0585-01 to Marilyn Diebold and/or Jerome Diebold for the violations described herein.

26. The State is authorized pursuant to §319.127, RSMo 2000, to bring a suit for civil penalties not to exceed ten thousand dollars, (\$10,000.00), for each day, or part thereof, the violations listed above have occurred or continue to occur, or both as the Court deems proper.

27. Should Defendant Marilyn Diebold continue to violate the UST law as described above, the people of the State of Missouri will be irreparably harmed and damaged in amounts incapable of being ascertained.

28. The unlawful acts of Defendant Marilyn Diebold are of such continuous nature and in such constant disregard for the protection of the soil and water of the State of Missouri, that the State of Missouri believes that the UST law will continue to be violated by Defendant Marilyn Diebold unless she is restrained by this Court.

29. The State of Missouri has no adequate remedy at law, and suit for injunctive relief is authorized pursuant to §319.127.1, RSMo 2000.

WHEREFORE, the State prays this Court's order that:

A. Find that all violations as alleged in the State's Petition occurred and continue to occur;

B. Assess against Defendant Marilyn Diebold a civil penalty in an amount up to Ten Thousand Dollars, (\$10,000.00), per day, for each day or part thereof Defendant Marilyn Diebold has violated the UST law;

C. Issue a preliminary and permanent injunction compelling Defendant Marilyn Diebold to promptly investigate and remediate the petroleum contamination at the site; take all steps necessary to comply with the UST law; and prohibit her from any further violations of the UST law;

D. Assess against Defendant all costs of these proceedings;

E. Order such other relief as this Court deems necessary and appropriate under the circumstances.

COUNT II: CIVIL PENALTY AND INJUNCTIVE RELIEF
FOR VIOLATIONS OF THE MISSOURI CLEAN WATER LAW

30. The State of Missouri realleges and reincorporates herein by reference the allegations contained in paragraph 1-29 of this Petition as though fully stated herein.

31. Defendants have failed to comply with the Missouri Clean Water Law and implementing regulations by causing pollution to a water of the state by permitting to be

placed and remain a water contaminant in a location where it is reasonably certain to cause pollution to a water of the state in violation of §644.051.1(1), RSMo 2000.

32. The State is authorized by §644.076.1 to bring a suit for civil penalties not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day, or per thereof, each violation occurred, and continued to occur, or both as this Court deems proper.

33. Should Defendants continue to pollute waters of the State or place, cause, or permit to be placed a water contaminant where it is reasonably certain to cause pollution of waters of the state as aforesaid, the people of the State of Missouri will be irreparably harmed and damaged in amounts incapable of being ascertained.

34. The unlawful acts of Defendants are of such continuous nature and in such constant disregard for the protection of waters of the State of Missouri, that the State of Missouri believed that the Missouri Clean Water Law, Chapter 644, and applicable regulations will continue to be violated by the Defendants unless they are restrained by this Court.

35. The State of Missouri has no adequate remedy at law, and suit for injunctive relief is authorized pursuant to §644.076.1.

WHEREFORE, the State of Missouri prays for an order from this Court for the following relief:

A. Find the violations have occurred and continue to occur as alleged herein the State's Petition;

B. Assess against Defendants a civil penalty in an amount up to Ten Thousand Dollars (\$10,000.00) per day, for each day or part thereof defendants have caused, permitted, or allowed violations of the Missouri Clean Water Law pursuant to §644.076.1;

C. Issue a preliminary and permanent injunction prohibiting Defendants from any further violations of the Missouri Clean Water Law, Chapter 644, and the regulations duly promulgated thereunder;

D. Assess against Defendants all costs of these proceedings;

E. Order such other relief as this Court deems necessary and appropriate under the circumstances.

Respectfully submitted,

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